IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.575 OF 1995

The Cosmopolitan Co-operative Housing Society, (registered under Maharashtra Co-op. Society Act, 1960, Registration No. KBA-HSG/106, dated 23rd July 1965) through its Secretary- Khalil Ahmed Khatib. ...Appellants
(Original Claimants)

V/s

1. The Special Land Acquisition Officer, Metro Centre No.1, Panvel, District Raigad.

2. The State of Maharashtra
(Original Opponent) ...Respondents.

Mr. N.B. Shah for the appellants.

Mr. K.K. Tated, AGP for the respondents.

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ALONG WITH
FIRST APPEAL NO. 817 OF 1994

The State of Maharashtra, (At the instance of Special Land Acquisition Officer, Metro Centre No.I, Panvel District: Raigad) ...Appellant. (Orig. opponent)

V/s

The Cosmopolitan Co-op. Housing Society, (Registered under Maharashtra Co-op. Society Act, 1960, Registration No.KBA HSG/106, dt. 23/7/1965) through its Secretary Khalil Ahmed Khatib. ...Respondent
(Orig. Claimant)

Mr. K.K. Tated, AGP for the appellant.

Mr. N.B. Shah for the respondent.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE : 23rd September, 2005.

ORAL JUDGMENT: (Per R.M.S. Khandeparkar, J.)

1. Both the appeals, the appeal No.575/95 filed by the claimant and No.817/94 filed by the State arise from the award dated 09/07/1993 passed by the Reference Court in Land Acquisition Reference No. 145 of 1986 and involves a common question of law and facts, and, therefore, they were heard together and are being disposed of by this common judgment.

2. The claimant is the Housing Society registered under the Maharashtra Co-operative Societies Act, 1960 since 1965. The land in question comprises of various survey numbers situated adjoining each other on the Western side of Mumbai-Pune National High Way abutting on the western side of the Mumbai-Pune National High Way No.4. After the purchase of the said land, it was developed by the claimant by preparing necessary lay out plan of the property, demarcating boundaries as also by filling up with earth wherever necessary and

by demarcation of plots and road. The development had commenced in the year 1965 and continued till 1967. At the time of purchase of the land during the period from 1963 to 1965, the claimant had paid the price on an average rate of Rs 3.50 paise per yard. For the purpose of development of the land, the claimant incurred an expenditure to the extent of Rs 1,71,560.00. On 03/02/1970, the Government issued a notification under section 4 expressing its intention to acquire the land in question. The same was objected to by the claimant. However, the Government proceeded to acquire the land by issuing declaration under section 6 on 11/01/1973. The same was followed by section 9 notice to the claimant on 02/08/1973 which was replied to by the claimant, claiming Rs 14.00 per sq. meter. Consequent to the urgency involved in the matter, the acquiring body took over the possession of the land in question during the pendency of the acquisition proceedings on 21/02/1974. The land acquisition officer declared his award on 27/03/1984 thereby acquiring total area of 1,98,720 sq. meters and enhancing the value from Rs 5.00 to Rs 5.50 paise per sq. meter, totalling to sum of Rs 10,95,905.00 in addition to the soletium and additional amount of interest in terms of section 23 of the said Act Being aggrieved by the said offer, the

claimant preferred an application under section 18 on 07/05/1984, claiming compensation @ Rs 25.00. During the pendency of the proceedings before the Reference Court, the claimant further sought amendment to the claim amount to Rs 30.00 per sq. meter and the same was allowed by the Reference Court on 29/09/1992. The claimant in support of its claim for enhancement of the compensation examined the Secretary of the Management Committee of the claimant and a Valuer Mr. Jeewan Kulkarni and also sought to produce documentary evidence. No evidence was led on behalf of the State. The Reference Court while holding that the claimant had established that the compensation offered by the Land Acquisition Officer was inadequate and improper, granted enhancement to the extent of Rs 25.00 per. sq. meter. Being aggrieved by the said award, granting enhancement to the extent of Rs 25.00 per sq. meter, the State as well as the claimant have filed these appeals.

3. The learned advocate appearing for the claimant submitted that, undisputedly, the land in question was already a developed land on the date of issuance of the notification under section 4 of the said Act and that was clearly established by the testimony of the deponents on behalf of the claimants including the

quantum of expenditure incurred for bringing about the development of the land and making it suitable for construction activity therein. Further, referring to the impugned judgment which clearly referred to judgment already passed by this Court in FA No. 892 of 1992, the learned advocate submitted that this Court, had awarded to the adjoining land the compensation @ 25.00 per sq. meter and, therefore, bearing in mind the expenditure incurred by the claimant for developing the land in question, the claim for Rs 30.00 per sq. meter was well justified. He also submitted that the land in question is situated by the side of Mumbai-Pune High Way and all the facilities including electricity and water are available in abundance in the area and, therefore, the Reference Court ought to have considered that Rs 30/- would be just and appropriate compensation for the land acquired.

4. The learned Additional Government Pleader appearing for the State submitted that the claimant had claimed Rs 14.00 per sq. meter in answer to section 9 notice which was issued much prior to the enforcement of Amendment Act 68 of 1974 which came into force with effect from 24/09/1984 and bearing in mind the applicability of unamended section 25, on

that count, to the matter in hand, could not have entertained the claim and granted the compensation over and above Rs 14.00 per sq. meter. He further submitted that though in First Appeal No. 892 of 1992, the compensation was awarded @ Rs 25.00 per sq. meter, the comparability between the land which was the subject matter of the said appeal and the land in question was never established and merely because particular rate is awarded for the adjoining land, the same cannot be blindly applied to the land in question without dealing with the issue relating to the comparability of the land. He further submitted that the evidence produced by the claimant nowhere justified the enhancement of compensation @ Rs 25/- as granted or @ Rs 30/- as claimed and, on the contrary, the Land Acquisition Officer had correctly assessed the compensation and was justified in awarding the compensation @ Rs 15.50 paise per sq. meter.

5. As regards the failure on the part of the Reference Court to take note of an unamended section 25, the learned advocate for the claimant submitted that no such ground was raised in the Memo of Appeal and, therefore, the State is not entitled to challenge the award on the said ground.

6. Upon hearing the learned advocate for the parties and on perusal of the records, the following questions arise for consideration:-

(1) Whether the Appeal Memo filed by the State discloses the ground challenging the failure on the part of the Reference Court to take note of an unamended section 25 and apply it to the facts of the case and, if not, whether such a ground can be allowed to be raised at the stage of the final disposal of the appeal?

(2) Whether the claimant is entitled to claim over and above the amount which was claimed in answer to section 9 notice?

(3) Whether the compensation awarded @ Rs 25.00 to the land in question is justified on the basis of the materials on record or whether the evidence discloses justification for grant of compensation at any other rate either over and above or lower than the rate granted by the Reference Court?

7. As regards the contention about the absence of the ground relating to the applicability of unamended

section 25 of the said Act, section 54 of the said Act clearly provides that the provisions of the Code of Civil Procedure shall apply to the appellate proceedings against the award passed by the Reference Court. Section 53 also provides that save in so far as they may be inconsistent with anything contained in the said Act, the provisions of the Code of Civil Procedure, 1908 shall apply to all the proceedings under the said Act.

8. Order XLI, Rule 1(2) deals with the subject of contents of the Memorandum of Appeal. It provides that the Memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively. Sub-rule 2 of Order XLI provides that the appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objections set forth in the memorandum of appeal or taken by the leave of the Court under the said rule, provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a

sufficient opportunity of contesting the case on that ground. Bearing in mind the above provisions of law and the objections sought to be raised in the matter regarding absence of the ground relating to the applicability of unamended section 25 of the said Act to the proceedings, if one peruses the memo of appeal filed on behalf of the State, it discloses various grounds, including the following:-

"10) That the learned Judge has further committed an error while awarding benefits of the amended provision of the Act to the claimant.

11) That the Hon'ble Judge ought to have considered the amended claim of Rs 30/- per sq. meter by the claimant but should have at the most considered the initial claim of Rs 14/- per sq. mtr. thus the Learned Judge ought not to have awarded at Rs 25 per sq. mtr. which is excessive amount warded.

15) That the Learned Judge ought to have noticed that the Notification u/s 4 was published in the year 1970 and it is wrong to apply provisions of the Amended Act to these

proceedings.

16) The provisions of law under the Land Acquisition Act have not been properly construed and applied to the fact of the present case resulting in miscarriage of justice.

(20) That the Judgment and Decree passed by the Learned Judge is contrary to the provision of law and is also contrary to the facts on record and therefore, it deserves to be quashed and set aside.

Plain reading of the above grounds and particularly ground Nos 10 and 11 together will evidently disclose that the State had certainly raised the point of non-applicability of the amended provisions which include amended section 25 of the said Act to the matter in hand. In other words, the applicability of unamended section 25 of the said Act to the facts of the case. Being so, when the memorandum of appeal apparently discloses the clear ground regarding applicability of unamended provisions including section 25 and non-applicability of amended provisions

of the said Act to the facts of the matter, it cannot be said that the State is not entitled to raise the said issue or urge the matter to be considered on the basis of applicability of unamended section 25 of the said Act.

9. Unamended section 25 and in particular sub-section 1 thereof reads thus:-

> "When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11."

The said provision of law, therefore, precludes the Reference Court from travelling beyond the parameters specified thereunder as to the maximum limit to which the Court can fix the market value of the land acquired. It clearly provides that the compensation which can be awarded in a case where the claim quantified in answer to section 9 notice, shall be under no circumstances beyond the amount so quantified by the claimant, as also it shall not be less than the amount awarded by the Collector under section 11.

Undisputedly, proceedings in the case in hand had commenced prior to 24/09/1984, the notification under section 4 having been issued on 13/02/1970 and notice under section 9 having been issued on 02/08/1973. The possession of the land was taken on 21/02/1974 and the award was passed on 27/03/1984. In other words, entire proceedings for the purpose of acquisition of land were concluded prior to enforcement of the Amendment Act 68 of 1984 which came into force from 24/09/1984. It is well settled law that the statutes dealing with the substantive rights are always prospective, unless it is expressly or by necessary implication made to have retrospective operation and in relation to the Amendment Act 68 of 1984 the Apex Court has clearly held the same to be prospective in nature and not retrospective. The decisions of the Apex Court in The Land Acquisition Officer-cum-DSWO Vs. M/s. B.V. Reddy and Sons reported **2002 AIR SCW 773**, Krishi Utpadan Mandi Samiti vs. Kanhaiya Lal and Others reported in **2000 AIR SCW 3575** and in Ghaziabad Development Authority vs. Anoop Singh and another reported in **2003 AIR SCW 506** are very clear and the issue has been elaborately dealt with in another case viz. State of Maharashtra vs. Dhanaji Kamalu Joshi in First Appeal No.430 of 1993 decided on 25/08/2005 and 01/9/2005. Being so, on all counts, the

provisions of unamended section 25 would apply to the facts of the case in hand.

10. It is true that the Reference Court did not take into consideration above aspect of the matter and without application of mind to the same, proceeded to decide about the claim for enhancement of the compensation. It is pertinent to note that para 7 of the Reference Application which was filed by the claimant under section 18 of the said Act clearly disclosed the fact that the claimant had claimed Rs 14/- per sq. meter in answer to the notice under section 9 of the said Act. Obviously, it was clearly revealed to the Reference Court that the claimant had quantified its claim for compensation in answer to section 9 notice to the extent of Rs 14/- per sq. meter. Considering the mandate of unamended section 25(1) of the said Act, it was, therefore, obligatory for the Reference Court not to award any compensation over and above the amount claimed by the claimant in answer to section 9 notice. Failure on the part of the Reference Court to comply with its obligation to adhere to the statutory fetters imposed on exercise of powers of the Reference Court in the matter of ascertaining the market value of the acquired land clearly renders the impugned award granting

compensation over and above the land which was claimed by the claimant in answer to section 9 notice to be bad-in-law. It being contrary to the statutory provisions, the State is justified in challenging the same irrespective of the fact that no issue on that count was framed. It is to be noted that once it becomes obligatory for the Court pursuant to certain statutory provisions to take notice of its limitation in relation to the controversy placed before it, the failure on the part of the Court to perform its own obligation cannot enure to the benefit of either of the parties to the proceedings. In cases where such failure of obligation is brought to the notice of the appellate Court, nothing would prevent the appellate Court from taking note of it and to deal with such issue and to decide about the same. Rather, it would be duty of the appellate Court in that regard bearing in mind the provisions of section 107 of the Civil Procedure Code read with Order XLI Rule 2 and Rule 33 of the Code.

11. As already seen above, the memo of appeal clearly discloses the grievance about failure on the part of the Reference Court to apply the amended provisions of section 25 and ignoring the fact that the claimant had claimed compensation @ Rs 14/- per sq. meters in

answer to section 9 notice. Being so, under no stretch of imagination, it can be said that consideration of this point at the appellate stage would result in any prejudice to the claimant. In fact, the claimant itself was fully aware that it had restricted its claim to Rs 14/- per sq. meter and that was clearly stated in para 7 of the application under section 18. In-spite of knowing the said fact and in-spite of the fact that even the award was passed prior to the amendment to section 25 and even the application under section 18 was filed prior to enforcement of amendment to Section 25, it was obvious that the claimant could not have claimed any amount over and above Rs 14/- as compensation under reference under section 18 of the said Act at the relevant time. Being so, the question of prejudice to the claimant on this count cannot arise under any circumstances.

12. As regards the last point of consideration apart from the fact that the compensation could not be awarded over and above Rs 14 per sq. meter which was the amount claimed in answer to section 9 notice, it was necessary to ascertain from record whether even the said amount of compensation would be justifiable. Perusal of the records including the impugned award discloses that the material evidence in favour of the

claimant is the judgment in First Appeal No. 892 of 1992. In the said case, the Reference Court had awarded sum of Rs 25/- per sq. meter and appeal against the same was dismissed. That was the amount awarded in relation to plot admeasuring 1620 sq. meters. Undoubtedly, the land in that case was situated in the adjoining area. However, the fact remains that the land in question which is the subject matter of the present proceedings admeasures 1,98,720 sq. meters. In other words, the land acquired in the case in hand is a large piece of land in comparison to the plot which was the subject matter of First Appeal No. 892 of 1992. It is well settled law that the rate fixed for ascertaining market value of the smaller plot of land cannot be blindly applied to fix the market value of large piece of land. There can be no comparison between the area of 1,98,720 sq. meters with the area of only 1620 sq. meters. However, it is certainly relevant piece of evidence to ascertain the rate of developed plots in the locality. It is to be noted that merely because the land which is a subject matter of appeal No.892 of 1992 happens to be in the locality, the said rate cannot be blindly applied to the land in question bearing in mind the law laid down by the Apex Court in the case of **V. Hanumantha Reddy (Dead) by L.Rs. vs. Land**

Acquisition Officer and Mandal R. Officer, reported in **AIR 2004 SC 1185**. Considering the same and bearing in mind various decisions along with the methodology of calculating the market value of large piece of land after taking the note of the rate relating to smaller pieces of land, even if sum of Rs 25/- per sq. meter has to be taken as base while applying the same to a large piece of land, 50% therefrom will have to be deducted and, considering the same, the rate which could be applied for a large piece of land like the one in the matter in hand would be Rs 12.50/- per sq. meter. The evidence on record also disclose that the land in question was purchased by the claimant in the year 1963-65 at the rate of about Rs 4/- per sq. meter. The testimony of the witnesses undisputedly disclose the expenditure to the extent of Rs 1,71,560.00 incurred by the claimant - Society for the development of the said land and such an expenditure having been incurred towards surveying the property, making lay out plans, fixing the boundaries, diversion of nala, earth filling etc. Undoubtedly, therefore, considerable development was carried out in the land in question on the date of issuance of notification under section 4. Taking into consideration all these aspects, certainly, the claim which was putforth by the claimant itself to the extent of Rs 14/- per sq.

meter cannot be said to be exorbitant.

13. For the reasons stated above, therefore applying the base of rate which was given in First Appeal No. 892 of 1992, the value cannot exceed Rs 14/- per sq. meter. The claimant itself having valued the land at the rate of Rs 14/- per sq. meter in answer to section 9 notice and bearing in mind restriction under unamended section 25 of the said Act which is applicable to the facts of the case, in our considered opinion, the just and proper compensation for the acquired land would be Rs 14/- per sq. meter. The points for determination formulated above stood answered accordingly.

14. In the result, therefore, the appeal filed by the State partly succeeds whereas the appeal filed by the claimant fails. The impugned award stands modified in the above terms. It is needless to say that all other benefits also stand modified in the above terms. It is informed that the amount in terms of the enhancement granted by the Reference Court has already been paid to the claimant. The claimant shall be liable to refund the excess amount collected in the matter i.e. over and above Rs 14/- per sq. meter and the statutory benefits accrued therein. The excess

amount so collected shall be refunded by the claimant alongwith interest thereon at the rate of 6% per annum within a period of 12 weeks from today.

(R.M.S. KHANDEPARKAR, J.)

(V.M. KANADE, J.)